

DETAILED ACTION

Due to the discovery of double patenting concerns with regard to U.S. Patent No. RE40,498 and U.S. Patent Application No. 11/607,889, the finality of the present Application, mailed 7/27/09, is withdrawn.

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,809,306 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 80 – 82, 85, 87 – 90, and 95 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 42 of U.S. Patent No. RE40,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the mapping below.

Claim 80 of the present Application maps directly to claim 42 of ‘498.

Claim 81 of the present Application maps directly to claim 42 of ‘498.

Claim 82 of the present Application maps directly to claim 42 of ‘498.

Claim 85 of the present Application maps directly to claim 42 of ‘498.

Claim 87 of the present Application maps directly to claim 42 of ‘498.

Claim 88 of the present Application maps directly to claim 42 of ‘498.

Claim 89 of the present Application maps directly to claim 42 of ‘498.

Claim 90 of the present Application maps directly to claim 42 of ‘498.

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Claim 95 of the present Application maps directly to claim 42 of '498.

Claims 80 – 82, 85, 87 – 90, and 95 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 42 of copending Application No. 11/607,889. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the mapping below.

Claim 80 of the present Application maps directly to claim 42 of '889.

Claim 81 of the present Application maps directly to claim 42 of '889.

Claim 82 of the present Application maps directly to claim 42 of '889.

Claim 85 of the present Application maps directly to claim 42 of '889.

Claim 87 of the present Application maps directly to claim 42 of '889.

Claim 88 of the present Application maps directly to claim 42 of '889.

Claim 89 of the present Application maps directly to claim 42 of '889.

Claim 90 of the present Application maps directly to claim 42 of '889.

Claim 95 of the present Application maps directly to claim 42 of '889.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth R Coulter/
Primary Examiner, Art Unit 2454

/KRC/